

REMARKS

The only issues outstanding in the Office Action mailed June 7, 2007 are the Requirement for Restriction, the objection to the Abstract, and the single rejection of all claims under 35 U.S.C § 102. Reconsideration of these issues, in view of the following discussion, is respectfully requested.

REQUIREMENT FOR RESTRICTION

Applicant's traversal of the Restriction Requirement is maintained, for the reasons of record. It is argued, at page 2 of the Office Action, that Applicants' discussion of unity of invention in National Stage Applications has been superseded. However, the discussion at page 2 of the Office Action pertains to unity of invention in the *International* stage. In any event, 37 CFR § 1.475, which has not been superseded, states that an International or National Stage Application containing claims to different categories of invention *will* be considered to have unity of invention if the claims are drawn to one of the following combinations of categories: "... (2) a product and process of use of said product." Accordingly, Applicants stand by the previous discussion and maintain the traversal of the Restriction Requirement. Withdrawal thereof is again respectfully requested.

ABSTRACT

A new Abstract is presented herewith, and withdrawal of the objection thereto is respectfully requested.

REJECTION UNDER 35 U.S.C § 102

Claims 1 - 11 have been rejected under 35 U.S.C §102(b) over Klaerner et al. (U.S. 2002/0010267). Reconsideration of this rejection is respectfully requested.

Kaerner is directed to methods and compositions for controlled free radical polymerization in heterogeneous aqueous media. See paragraph [0003]. In particular, Patentees' invention is directed nitroxide materials as polymerization controllers. The Applicants disclose a very large variety of monomers which can be used to produce block copolymers. See, for example, the list in paragraph [0013] and [0014]. This long list includes materials which can be rigid hydrophobic blocks such as polystyrene or poly(substituted) styrene, rigid hydrophilic blocks (such as polyacrylic acids, polymethacrylic acids, polyacrylamides, polydimethylacrylamides) or elastomeric hydrophobic blocks (such

as polyacrylates). Applicants further indicate that the second block may be obtained by polymerization of the same monomers as those of the first block. See the above noted sections. Thus, at best, and only arguably, this disclosure could be generic to the present claims reciting a blocked polymer having at least one rigid hydrophilic block (B), and at least one hydrophobic elastomeric block (A). Such a generic disclosure falls far short of an anticipation. Moreover, as one of ordinary skill in the art reads the Klaerner disclosure, attempting to glean some direction as to materials which should be used for each block, the skilled artisan is lead away from the combination of rigid hydrophilic blocks with elastomeric hydrophobic blocks. For example, no distinction is made or preference given for one or the other type of material in the long list of monomers recited in paragraph [0070]. All of the examples of the disclosure which product block copolymers do not use such an arrangement. Examples 8, 9, 10, 11 and 15 disclose copolymers of n-butylmethacrylate and styrene, two hydrophobic monomers. Combination of styrene and butylacrylate is mentioned in [0014] of the disclosure, as well. Examples 12 and 13 disclose copolymers of styrene and acrylic acid, i.e., copolymers of a rigid hydrophobic monomer and of a rigid hydrophilic monomer. (No elastomeric monomers are used in these examples.) Example 14 discloses a copolymer of a rigid hydrophobic block, polystyrene.

Accordingly, one of ordinary skill in the art is simply not directed by the reference to the selection of a rigid hydrophilic block to be copolymerized with an elastomeric hydrophobic block. The Federal Circuit's predecessor Court has held that a claim is not anticipated where one of ordinary skill in the art would have to judiciously choose from among alternatives, likening such a situation to discerning a combination of a safe from the inspection of its dials. See *In re Sivaramakrishnon*, 673 F.2d 1382, 213 USPQ 441(CCPA 1982).

Moreover, the Federal Circuit has held that a generic disclosure, without more, does not render obvious all that it encompasses. See, for example, *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir.1992). In *Jones*, the Court held that the mere disclosure of "substituted ammonium salts" was insufficient to suggest the particular substituted ammonium salts employed by the Applicants, since the preferred disclosure and examples of the reference did not highlight the later claimed subject matter, nor enable one of ordinary skill in the art to discern a preference therefor. It is thus respectfully requested that the Klaerner disclosure fails to support a rejection under either 35 U.S.C § 102 or 103, and withdrawal of all rejections is respectfully requested.


The claims of the application are submitted to be in condition for allowance.

However, if the examiner has any questions or comments, he or she is cordially invited to telephone the undersigned at the number below.

In addition to the failure of the reference to teach the particular block copolymer claimed, the reference fails to suggest employing the second copolymer block as a minor phase, dispersed in the form of nanodomains. Such a concept is not addressed at all in the reference. The Office Action does not address this concept, but is well established that all elements of a claim must be shown in a reference to constitute an anticipation. This failure of the reference provides yet a further reason to withdraw the rejection.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

 (33,103)
Harry B. Shubin, Reg. No. 32,004
Attorney/Agent for Applicant(s)

MILLEN, WHITE, ZELANO
& BRANIGAN, P.C.
Arlington Courthouse Plaza 1, Suite 1400
2200 Clarendon Boulevard
Arlington, Virginia 22201
Telephone: (703) 243-6333
Facsimile: (703) 243-6410
Attorney Docket No.: ATOCM-0352

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